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VIA HAND DELIVERY

January 27,2003

EX PARTE

Marlene Dortch Secretary Federal Communications Commission The Portals TW-A325 445 12th Street, S.W. Washington, D.C. 20554 RECEIVED

JAN 2 7 2003

FEDERAL COMMUNICATIONS COMMISSION OPPICE OF THE SECRETARY

Re: Oral *Ex Parte* Presentation

CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On January **24**, 2003, the undersigned had a brief telephone call concerning the above-referenced proceeding with Matthew Brill, Senior Legal Advisor to Commissioner Abernathy. During the discussion, EarthLink reiterated points previously in the above-referenced dockets regarding line sharing as an unbundled network element (UNE). EarthLink expressed its support for the continuation of line sharing as a UNE. With regard to the issue on remand from *USTA v. FCC*, EarthLink explained that, since CLECs have no access to cable facilities, the FCC's data regarding cable modem service would seemingly have no relevance to the UNE necessary and impair analysis.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, an original and six copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceedings. Should you have any questions, please contact me.

Sincerely,

Mark J. O'Connor

Counsel for EarthLink, Inc.

Mak 1-04 <u>-</u> —

CC: Matthew Brill, Esq.